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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,505	08/04/2003	Carlos Daniel Jaffe	51,179	7522

7590 10/06/2005  
Neil John Graham  
6017 Lido Lane  
Long Beach, CA 90803

EXAMINER

STOKES, CANDICE CAPRI

ART UNIT PAPER NUMBER

3732

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,505

Applicant(s)

JAFFE, CARLOS DANIEL

Examiner

Candice C. Stokes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-12, 16-21 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 4-6, 13-15, 22-24 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In lines 6-7 of Claim 19, it is claimed that "the rear end of the prophy cup extends and is contained within the second end of the drive shaft", however, Fig. 3 shows the drive shaft inside the cup. Thus it appears there is no antecedent basis for what is claimed in Claim 19.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 16, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 16, and 25 recites the limitation "prophy cup skirt" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7-12, 16-21, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chipian et al (USPN 5,642,994). Chipian et al disclose a prophy angle comprising a prophy handpiece 105 with a driveshaft 140 with a first end with projections 210 and a second end attached to a prophy cup 110 with a longitudinal axial direction, a rear end and a front end, an inside and outside. With further regard to Claim 1, Chipian et al disclose "the present invention is a combination of the headpiece 100 described in Figs. 2A, 2B, and 2C and fluid agent storage container 300 shown in a preferred embodiment in Figs. 3A and 3B. The storage container 300 is the simplest of all the storage containers to be disclosed herein. The container 300 is a flexible bladder, similar in function and form to a tube of toothpaste, except a dispensing orifice 310 is offset from the center of an end cap 320 (see Fig. 3B)" (col. 6, lines 35-42). "The orifice 310 is designed to fit snugly into the interference tapered container port 250 of the headpiece 100, and still allow a fluid agent to flow out of the container 300 and into the port 250" (col. 6, lines 47-50). Further Chipian et al teach "To dispense the fluid agent, the headpiece 100 is secured to the dental instrument handpiece 105. The dispensing orifice 310 of a fluid agent filled bladder 330 slides into the interference tapered container port" (col. 6, lines 62-65). "A fingertip or thumb presses from the sealed end 350 of the bladder 330, thereby forcing a fluid agent out of the bladder 330 and into the headpiece lumen 230, through the cup shaft 170 and

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into the prophy cup 110" (col. 7, lines 2-5). Chipian et al fail to disclose or reasonably teach the prophy cup 110 having an elastomeric material, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the prophy cup of an elastomeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further, the drive shaft disclosed by Chipian et al is manually driven but it would have been obvious design choice to make it electrically driven.

As to Claims 2, 11, and 20 Chipian et al teaches a prophy cup having a front end with a skirt as shown in Fig. 1A and explain "Fig. 1A is a perspective view of the simple system that the inventors believe is probably the most similar in appearance to the present invention" (col. 4, lines 53-56). Regarding Claims 3, 12, and 21 Fig. 2A shows prophy cup 110 having a narrowing annular retaining lip at the bottom portion of cup 110. With regards to Claims 7, 16, and 25 there is no further structural characteristics provided in these claims and the prophy cup disclosed by Chipian et al is capable of performing in the same manner as the claimed invention. Referring to Claims 9, 18 and 27 Chipian et al disclose, "it may be advantageous to permanently embed the abrasive agent in the prophy cup material as shown in Fig. 11" (col. 7, lines 40-42).

Chipian et al also teaches the invention as stated in Claim 8, 10, 17 and 26 however they do not teach the claimed ranges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a prophy angle as stated in these claims with the specified ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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*Allowable Subject Matter*

Claims 4-6, 13-15, 22-24, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Candice C. Stokes

  
Cary E. O'Connor  
Primary Examiner